

A caterer incurs Retailers' Occupation Tax liability on his entire receipts from his catering service without any deduction for his costs of doing business. See 86 Ill. Adm. Code 130.410 and 130.2145. (This is a GIL.)

October 24, 2007

Dear Xxxxx:

This letter is in response to your letter dated June 7, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are a Certified Public Accounting firm in the process of acquiring a catering company as a client and we have a sales tax question we need answered.

In reviewing the internet we find two letters from the sales tax department, one dated May 20, 1988 and another dated July 2, 1992, both of which I am enclosing. We need verification as to equipment rental showing separately on a bill to a customer from a catering company for that rental equipment whether it be dishes, chairs, tables, etc, subject to sales tax.

Could you please help us and give us a letter explaining what the correct sales tax laws are in regard to the above.

DEPARTMENT'S RESPONSE

The Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property for use or consumption. Persons that are engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their gross receipts from such sales. Such persons specifically include caterers. See the Department's regulation "Vendors of Meals" at 86 Ill. Adm. Code 130.2145.

Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. Section 1 of the Retailers' Occupation Tax Act defines the term, "selling price," as the "consideration for a sale valued in money ... without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever...." See, 35 ILCS 120/1. As indicated by this definition, a retailer's costs of doing business are not deductible from his gross receipts. This principle is also articulated in Section 130.410 of the Department's rules. The regulation specifically states that in calculating Retailers' Occupation Tax liability, "freight or transportation costs ... or any other expenses whatsoever" are not deductible from gross receipts.

As a result, tax is imposed upon a caterer's entire gross receipts from sale, without any deduction on account of service costs or other overhead costs. A caterer's gross receipts would include all receipts associated with his sale of food. Such costs would include charges for linens, tables, chairs, dishes, glasses, flowers, labor, set-up, and delivery. Each of these items is a part of the cost of doing business as a caterer. It is immaterial that the customer is separately billed for the price of these items. These costs are costs of doing business as a caterer, just as they would be part of the overhead expenses incurred by a restaurant owner.

When a caterer makes separate charges to customers for items which are not associated with the sale of food, such items are not taxable, provided that they are separately listed on the invoice to the customer and are initialed by the customer. This would be the case, for instance, with charges for entertainment (singers, bands, and the like).

If, instead of acting as a caterer, a person rents tangible personal property to others, that person is not acting as a retailer. That person is acting as a lessor. In Illinois, lessors of tangible personal property under a true lease, except for automobiles leased for terms of one year or less, are considered to be the end users of the tangible personal property purchased for leasing purposes. See Section 130.220 and 130.2010. As end users of tangible personal property located in Illinois, lessors incur Use Tax on their cost price of the property. Since lessors are considered the end users of the property and have paid the Use Tax, no Retailers' Occupation Tax is imposed upon the rental receipts and the lessees incur no Use Tax liability for the rental charges. In Illinois, a true lease generally has no buy-out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease.

As stated above, lessees do not incur any tax liability in a true lease situation. However, it is typical of true leases to contain contractual provisions stating that the lessees will reimburse the lessors for the lessors' tax costs. This is not a matter of Illinois tax law but of private contractual agreement between the lessors and the lessees. If the lessees agree to such provisions, they are bound to satisfy that duty because of a contractual agreement, not because of Illinois tax law.

As an example, if a person rents a coffee maker to a business that has set up a booth at a convention, the person would be acting as a lessor and incur Use Tax on the cost price of the coffee maker purchased for leasing purposes. If, in connection with that rental, the person sold coffee, cream and sugar to the business occupying the booth, the person would be acting as a retailer, and would incur Retailers' Occupation Tax on the selling price of the popcorn.

Persons who are engaged in activities in which no tangible personal property is transferred do not incur tax liability. The Retailers' Occupation Tax, Use Tax, Service Use Tax and Service Occupation Tax apply only when there is a transfer of tangible personal property.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
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